

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, March 22, 2006, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Paul Schultz
Walter Tarmann
Ray Dwyer

BOARD MEMBERS ABSENT: Walter Schmidt

SECRETARY TO THE BOARD: Sheri Mount

OTHERS PRESENT: Joan & George Lucyk, BA06:014, petitioners/owners
Marc Miller, BA06:015, petitioner/owner
Heather Miller, BA06:015, daughter of owner
Brian Haley, BA06:015, neighbor
John & Jean Corrao
Don & Willough Berger, BA06:015, neighbor
Ronald S. Gasser, BA06:015, petitioner/owner
Allen J. Walters, BA06:007, neighbor
Linda Osterndorf, BA06:020, neighbor
Charles Laabs, BA06:018, neighbor
Richard Garvey, BA06:020, petitioner/owner
Hans Weissgerber, BA06:019, owner
Paul & Bonnie Wojik, BA06:014, neighbor
Gary Reichert, BA06:014, neighbor
Dennis & Nora Lenga, BA06:014, neighbor
Bob Sokolowicz, BA06:015, neighbor
Joe Eberle, Town of Merton BOA
Larry Frahm, BA06:018 & BA06:019, petitioner

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Tarmann *I make a motion to approve the Summary of the Meeting of March 8, 2006.*

The motion was seconded by Mr. Dwyer and carried unanimously.

NEW BUSINESS:

BA06:002 FREDERICK P. MANSKE
Larry Babb - Petitioner

Mr. Dwyer *I make a motion to accept the withdrawal of the application.*

The motion was seconded by Mr. Tarmann and carried unanimously.

The staff's recommendation was to accept the petitioner's withdrawal.

The reasons for the recommendation, as stated in the Staff Memorandum, are as follows:

On February 9, 2006, the Waukesha County Board of Adjustment held this hearing in abeyance until February 22, 2006 so the petitioners could submit further information regarding the correct legal description of the above-referenced property. On February 22, 2006, the Board held the hearing in abeyance again until March 22, 2006. The petitioner has asked to formally withdraw the application for a variance. Pending resolution of the legal description, the property owner will have to reapply for any necessary variances. Waukesha County staff recommends that the Board approve the withdrawal of the application and close the public hearing.

BA06:007 RONALD S. GASSER
RMG Properties, LLC - Owner

Mr. Dwyer

I make a motion to approve the variance from the setback requirements, approve the variance from building height and approve the variance from the sign setback/offset requirements subject to the conditions identified in the Staff Report with the following modifications:

Condition #1 shall be amended to read as follows: The sign located in the NE portion of the property must meet all setback and offset requirements. The "middle" sign on C.T.H. ES must be located a minimum of two (2) ft. from the base setback lines. The sign located in the SW portion of the property near I-43 is not approved herein as the petitioner withdrew the request for this sign.

Condition #5 shall be amended to read as follows: The poly-structure shall be allowed a maximum height of 48 ft. subject to approval of the Conditional Use Permit.

Condition #6 shall be amended to read as follows: The poly-structure must be adequately screened with reasonably sized (minimum height of three ft.) evergreen trees on all four sides. A Landscaping/Planting Plan shall be submitted to Planning & Zoning Division staff for review and approval prior to issuance of a zoning permit.

The reasons for approval shall be modified to read as follows: The approval of this request, with the recommended conditions, will allow a reasonable use of the property that is not unnecessarily burdensome. The petitioner has already been granted approval to run a landscaping business and supply company on the property. Variances, however, should only be granted to provide the minimum relief necessary to obtain reasonable use of the property. A setback variance for the poly-structure is justified for several reasons: the right-of-way of Crowbar Road is very large (See attached Exhibit A) and the structure will be located over 100 ft. from the paved road. In addition, Crowbar Road is an overpass and due to the grades in the immediate area, the poly-structure is less visible if it is closer to the lot line. However, planning staff feels that it's important for the building to be further from the base setback line than the petitioner is requesting to ensure that this extremely large building is not a public safety hazard or nuisance, to make sure it is not located in the slope leading to the right-of-way of Crowbar Road and to allow for enough room to adequately screen the structure with large trees on all sides. The sign setback variance for the sign along CTH ES is justified because the property owner signed over an additional 50 ft. of right-of-way in that area of the property to

the County for maintenance. That is a unique situation. County DPW does not have an issue with the sign as long as it is fully outside of their right-of-way. However, this is a 10.4-acre property and therefore, there is no hardship to the petitioner in complying with all applicable district offset and setback requirements for the other signs. The height variance is justified because this is a large commercial landscaping operation. Further, there are several other buildings in the immediate area, both on this property and adjacent properties that are at least as tall as the proposed structure. Further, the Crowbar Road overpass visually reduces the appearance of the overall height of the structure. As recommended, the proposal provides a reasonable use of the property that is not unnecessarily burdensome and will permit the petitioner to continue to expand his business on the property, while ensuring that this expansion is not detrimental to the surrounding neighborhood or contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for approval of the variance from the setback requirements, denial of the variance for the building height requirement, and denial of the sign setback/offset requirements of the Ordinance, with the following conditions:

1. The proposed signs must all conform to the road setback and offset requirements.
2. A Conditional Use Permit must be approved and issued by the Town of Vernon and Waukesha County prior to the issuance of a zoning permit for the structure.
3. The proposed poly-structure must be located a minimum of 40 ft. from the right-of-way of Crowbar Road. This is to ensure that it is located on the top of the slope leading to Crowbar Road.
4. No retaining walls are permitted. The structure must be located far enough from the slope of the right-of-way that no walls are required.
5. The poly-structure shall conform to the height requirements of the Ordinance (35 ft.).
6. The poly-structure must be adequately screened with large evergreen trees on all four sides. A Landscaping/Planting Plan shall be submitted to Planning & Zoning Division staff for review and approval prior to the issuance of a zoning permit.
7. Prior to the issuance of a Conditional Use Permit or a Zoning Permit, the Waukesha County Land Resources Division must review and approve the project to ensure that it is in conformance with the Erosion Control and Stormwater Permit. If required, an additional or revised permit shall be obtained.
8. Prior to issuance of a Conditional Use Permit or a Zoning Permit for the proposed work, a stake-out survey showing the location of the proposed structure, proposed addition and all existing structures on the property, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
9. Prior to the issuance of a Zoning Permit, a complete set of building plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
10. If not already done, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff, prior to the issuance of a

Conditional Use Permit and Zoning Permit.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will allow a reasonable use of the property that is not unnecessarily burdensome. The petitioner has already been granted approval to run a landscaping business and supply company on the property. Variances, however, should only be granted to provide the minimum relief necessary to obtain reasonable use of the property. A setback variance for the poly-structure is justified for several reasons: the right-of-way of Crowbar Road is very large (See attached Exhibit A) and the structure will be located over 100 ft. from the paved road. In addition, Crowbar Road is an overpass and due to the grades in the immediate area, the poly-structure is less visible if it is closer to the lot line. However, planning staff feels that it's important for the building to be further from the base setback line than the petitioner is requesting to ensure that this extremely large building is not a public safety hazard or nuisance, to make sure it is not located in the slope leading to the right-of-way of Crowbar Road and to allow for enough room to adequately screen the structure with large trees on all sides. However, this is a 10.4-acre property and therefore, there is no hardship to the petitioner in complying with all applicable district offset and setback requirements for the signs. As recommended, the proposal provides a reasonable use of the property that is not unnecessarily burdensome and will permit the petitioner to continue to expand his business on the property, while ensuring that this expansion is not detrimental to the surrounding neighborhood or contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA06:014 GEORGE & JOAN LUCYK

Mr. Dwyer *I make a motion to approve the request in accordance with the staff's recommendation, as stated in the Staff Report, with the conditions recommended in the Staff Report.*

The motion was seconded by Mr. Schultz and carried 4-1.

The staff's recommendation was for approval, with the following conditions:

1. All existing structures must be removed prior to the issuance of a zoning permit for a new structure.
2. The proposed residence must be reduced in size so that the total floor area, including the first and second floors, attached garage, any covered decks, covered patios, and/or covered porches do not exceed 1,600 sq. ft. This will result in a floor area ratio of approximately 22.9%.
3. The proposed residence must have an attached garage of at least 200 sq. ft and not greater than 400 sq. ft.
4. The total footprint (including the garage) shall be no larger than 800 sq. ft.
5. No detached structures are permitted.
6. The proposed residence must not exceed two stories as viewed from the Lake and the road. The proposed residence and attached garage shall not exceed a height of 22 ft. as measured from the lowest exposure to the peak.
7. The residence and attached garage must be a minimum of 75 ft. from the 100-year floodplain elevation or the Ordinary High Water Mark of Hunters Lake, whichever is more restrictive, with overhangs not to exceed one (1) ft. in width.
8. The proposed decks and patio must be a minimum of 75 ft. from the 100-year floodplain elevation or

the Ordinary High Water Mark of Hunters Lake, whichever is more restrictive.

9. The residence and attached garage must be at least 50 ft. from the right-of-way of Hunters Lake Road, with overhangs not to exceed one (1) ft. in width.
10. No retaining walls will be permitted within 5 ft. of the side lot lines, without approval from the Town of Ottawa Plan Commission and the Waukesha County Park and Planning Commission.
11. No retaining walls are permitted within 75 ft. of the Ordinary High Water Mark or the 100-year floodplain elevation, whichever is more restrictive.
12. The residence and attached garage and all other appurtenances must be at least three (3) ft. from the west and east lot lines, as measured to the outer edges of the walls and any windows/bump outs that extend further out from the structure than the walls, with overhangs not to exceed one (1) ft. in width. However, the residence and attached garage may be as close as 2.5 ft. from the side lot lines if the property owner obtains maintenance easements from the neighboring property owners.
13. There shall be no impervious surfaces between the residence and the side lot lines.
14. The first floor of the structure must be placed at least two (2) ft. above the 100-year floodplain elevation (flood protection elevation). The foundation shall be flood proofed and certified as set forth herein. Fill shall be used to elevate the first floor so as to meet the above. The fill shall not be less than one (1) foot below the flood protection elevation for the particular area and the fill shall extend at such elevation at least fifteen (15) feet beyond the limits of the structure. Where such distance cannot be achieved because of lot lines or other similar constraints, said fill elevation shall extend as far as is practicable resulting in no slope conditions at its terminus which may adversely affect surface water drainage on adjacent properties. In addition, where the fifteen (15) feet of fill cannot be achieved as set forth above, the structures shall be flood proofed to the flood protection elevation in accordance with the methods set forth herein and shall be certified as such by a professional engineer registered in the State of Wisconsin. Other methods may be used, as long as they are certified as set forth above. All flood proofing measures shall at a minimum provide anchorage to resist flotation and lateral movement, and shall insure that the structural walls and floors are watertight. In order to insure that adequate measures are taken, the applicant shall submit a plan or document certified by a professional engineer that the flood proofing measures are adequately designed to protect the property to the flood protection elevation.
15. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system, if there is one, is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
16. The onsite waste disposal systems and private wells must be flood proofed to the flood protection elevation (2 ft. above the 100-year floodplain) and shall conform with the provisions of the Waukesha County Sanitary Code and Wisconsin Administrative Codes
17. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
18. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed residence, attached garage, any proposed decks or patios, as well as any proposed sidewalks, stairs, walkways, and/or retaining walls, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. This survey must also show the location of the 100-year floodplain elevation on the property.
19. In order to ensure the construction of a new residence and attached garage does not result in adverse

drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. This grading plan may be combined with the Plat of Survey required in Condition No. 18.

20. The Plat of Survey shall clearly depict the location of the newly proposed driveway and its construction shall be incorporated into the Grading Plan to ensure that construction of the driveway does not result in adverse drainage on adjacent properties either during or after construction. If the property owner proposes to continue to use the existing driveway located on the adjacent property, an easement between the property owners shall be recorded granting use of this access.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will allow a reasonable use of the property that is not unnecessarily burdensome and is in scale with the lot size. Variances, however, should be granted only to provide the minimum relief necessary for a reasonable use of the property. It is felt by the Waukesha County staff, that the petitioner's proposed residence and attached garage are too large for the lot. The lot is extremely narrow and is not conducive to such a tall building. More importantly, it is possible to construct a more reasonably sized residence and attached garage that is more conforming to the district requirements than the requested proposal, while also providing a reasonably sized residence in scale with the lot's size and the surrounding properties. The recommended floor area ratio of 22.9% would permit a total floor area of 1,600 sq. ft., which provides a reasonable use of this very narrow property. There is no basement level possible on this property; however, none of the residences on this road have basements. Limiting the height of the structure was recommended because Waukesha County staff feels that anything larger would be overpowering and much too large for this lot. Most of the residences in the immediate area are only one or two story structures, but all but one of the lots on this road are at least 50 ft. wide, which is double the width of this lot. There are one or two three-story homes along Hunters Lake Road, but they are located on substantially larger lots. The recommended structure provides a reasonable use of this property, is not unnecessarily burdensome, and will permit the construction of a residence and attached garage that will be appropriately sized for the lot, and not detrimental to the surrounding neighborhood or contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA06:015 MARC & SANDRA MILLER

Mr. Tarmann *I make a motion to approve the request in accordance with the staff's recommendation, as stated in the Staff Report, with the conditions recommended in the Staff Report and for the reasons stated in the Staff report with the following modification:*

Condition #1 shall be amended to read as follows: The total floor area ratio on the property shall not exceed 20%.

The motion was seconded by Mr. Ward and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The total floor area ratio on the property shall not exceed 19.5%.
2. The shed must be removed from the property prior to issuance of a zoning permit for the remodel and addition.

3. The deck on the shoreline must be removed prior to issuance of a zoning permit for the remodel and addition. In addition, a Grading and Restoration Plan for the shoreline area must be submitted to Planning & Zoning Division staff for review and approval prior to issuance of a zoning permit.
4. The southernmost deck near the residence must be removed prior to issuance of a zoning permit for the remodel and addition.
5. The second story addition must be located within the footprint of the existing residence, as measured to the outer edges of the walls, provided the overhangs do not exceed one (1) ft. in width. If the overhangs exceed one (1) ft. in width, the building must be located so that the outer edges of the overhangs conform to the setback requirements.
6. The proposed residence must not exceed three stories (including any exposed basement level), as viewed from the lake. The residence shall be no taller than 36 ft., as measured from the lowest exposed point to the peak of the roof.
7. Prior to the issuance of a zoning permit, a complete set of building plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
8. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the existing residence and verifying that the shed and two decks have been removed from the property and in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. This survey must also identify the location of the 100-year floodplain on the property.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of the request for variances from the floor area ratio, offset, and the 50% requirements, as conditioned, will allow the petitioner to construct a second story addition to the residence and results in the removal of several extremely nonconforming structures from the property. Except for offset, the residence itself is a substantially conforming structure; therefore, requiring its complete removal and rebuild would be unreasonable. The floor area ratio variance is essentially temporary as sewer will be available to this area in the near future, at which time, 19.5% would be conforming. Variances, however, should be granted only to provide the minimum relief necessary for a reasonable use of the property. Allowing this structure to be expanded for a greater than 19.5% floor area ratio is not necessary and provides for more than minimum relief. Therefore, the approval of this request, with all recommended conditions, would be in conformance with the purpose and intent of the Ordinance.

BA06:018 SHELDON KNOLL LLC
Bauer Sign Co. – Petitioner

Mr. Bartholomew *I move to adjourn the public hearing until April 12, 2006 pending submittal of revised plans.*

The motion was seconded by Mr. Dwyer and carried unanimously.

The staff's recommendation was for denial.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Waukesha County staff feels that the proposed Master Sign Program is not appropriate for several reasons. County Planning staff and the Town Plan Commission feels that any Master Sign

Program needs to include detailed plans and specifications, uniform sign sizes and uniform designs for all businesses in the Brown Street Marketplace. Varying sign designs and sizes will create an unsightly condition for surrounding property owners and businesses. However, some variance from the sign size requirements is likely appropriate. It should be noted, the First Bank sign, the Aquatic World Pet and Scuba Center sign, and the Hallet Veterinary Hospital sign, which are all illuminated, all received variances to allow them to exceed the maximum permitted sign size. The factors taken into consideration when granting the variances for those other nearby signs were the speed limit on C.T.H. "P" (45 m.p.h.) and limited sight distances. In addition, the businesses in the Brown Street Marketplace are set back a significant distance from the C.T.H. "P" and are located behind "The Jewelry Mechanic" building. Therefore, Planning Staff recommends that a revised Master Sign Plan be submitted for review and consideration. If necessary, the petitioner will need to reapply for any needed variances.

BA06:019 HANS WEISSGERBER JR. & H.W.L.H., LLP
Bauer Sign Co. - Petitioner

Mr. Schultz

I make a motion to approve the variance from the sign requirements with the following conditions:

1. *The signs shall be no larger than 40 sq. ft. in size.*
2. *A Site Plan/Plan of Operation permit must be approved and issued by the Town of Oconomowoc and Waukesha County prior to the issuance of a Zoning Permit for the signage.*
3. *A site plan clearly depicting where the two proposed signs will be located on the building must be submitted prior to approval of the Site Plan/Plan of Operation permit and a Zoning Permit. The amended site plan must consist of photographs of all four sides of the building as they currently exist (clearly labeled) and a photo clearly depicting the locations of the proposed signs.*
4. *The signs may only have illuminated letters. The remainder of the signs shall not be illuminated.*
5. *Revised sign designs that conform to all conditions of approval must be submitted to County Planning & Zoning Division staff prior to issuance of the Site Plan/Plan of Operation permit and a Zoning Permit.*
6. *A Zoning Permit for the signs must be issued by Planning & Zoning Division staff prior to the installation of the signs.*

The reasons for the approval are as follows: Approval of the requested Variance, with the recommended conditions, allows the petitioner reasonable use of the property while maintaining the spirit and intent of the Ordinance. The property is located in a business district where signs are expected and needed to attract retail business. The sign as proposed complies with the road setback and should not impact the safety of traffic on C.T.H. "P". The building is a multi-tenant plaza and it is reasonable that the signage denoting the names of multiple tenants be slightly larger than the signage for the individual tenants. The safety reason should be noted regarding the end of Wisconsin Avenue or Hwy "R" and the exit ramp off of Hwy "16" being in close proximity to the plaza. Larger lighted signs would definitely be a safety feature that would allow people pulling off of the ramp

or heading north on C.T.H "P" from the Oconomowoc Lake area to be able to anticipate and see people turning in or slowing down in order to turn into the plaza. Therefore, the request, as conditioned, will not adversely affect the surrounding property owners and would not be contrary to the public interest, and therefore is in conformance with the purpose and intent of the Ordinance.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was that the matter be held in abeyance and the hearing adjourned to a date certain pending submittal of more detailed site plans indicating exact sign locations.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Planning staff worked for several months to get the petitioner to complete this application and doesn't feel this matter should be approved without having more detailed and correct plans.

BA06:020 ELAINE C. GARVEY

Richard Garvey – Petitioner

Mr. Tarmann *I make a motion to approve the request in accordance with the staff's recommendation, as stated in the Staff Report, with the conditions recommended in the Staff Report.*

The motion was seconded by Mr. Dwyer and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The proposed residence addition must conform to the road setback requirements.
2. The proposed garage addition is not to extend beyond the existing foundation of the residence towards Ashippun Shores Drive.
3. The proposed additions shall be one-story only.
4. If not already done, the Environmental Health Division must certify that the existing septic system is adequate for the revised construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will allow a reasonable use of the property that is not unnecessarily burdensome. It has been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. The 50% variance, as recommended, will not interfere with the public's use of the road or be a safety hazard. The residence addition will be located further from the road than the existing structure and will conform to the road setback requirements. The garage addition conforms to all setback and offset requirements. The existing house is substantially conforming as it is only located within 50 ft. of Carol Drive at a corner of the residence. Most of the existing residence is further than the required 50 ft. As recommended, the proposal provides a reasonable use of the property that is not unnecessarily burdensome and will permit remodeling and additions to the residence that are not detrimental to the surrounding neighborhood or contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

ADJOURNMENT:

Mr. Bartholomew *I make a motion to adjourn this meeting at 10:20 p.m.*

The motion was seconded by Mr. Dwyer and carried unanimously.

Respectfully submitted,

Sheri Mount
Secretary, Board of Adjustment

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